



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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In re: Patent Application of
ERIC CLEVER ET AL.

Serial No. 09/188,702

Filed: August 13, 1998

For: Hermaphroditic (Genderless)
Construction System

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

Group Art Unit 3712

Examiner Kien T. Nguyen

Appeal Brief
22
7/1/02
BR

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the U.S. Postal Service as first class mail in an envelope
addressed to: Assistant Commissioner for Patents,
Washington, D.C. 20231, on June 13, 2002

Norman E. Lehrer
Norman E. Lehrer, Reg. No. 28,561

APPELLANTS' BRIEF ON APPEAL

Pursuant to 37 C.F.R. §1.192, Appellants hereby present their brief on appeal
from the Primary Examiner's Final Rejection. A timely filed Notice of Appeal was received in
the Patent and Trademark Office on March 13, 2002.

1. REAL PARTY IN INTEREST

The real party in interest is as stated above in the caption.

2. RELATED APPEALS AND INTERFERENCES

Appellants and their legal representative are unaware of any other appeals or
interferences which will directly affect or be directly affected by or have a bearing on the Board's
decision on the pending appeal.

3. STATUS OF THE CLAIMS

Claim 6-12 are pending in the application. Claims 6-12 stand rejected and are on appeal.

4. STATUS OF AMENDMENTS

No amendments were filed subsequently to the final rejection.

5. SUMMARY OF INVENTION

Appellants' invention is directed generally to a construction system which may be used as a toy and which includes hub, rod and block assemblies in which rods are inserted perpendicular to the major plane of said hubs and blocks. The claims on appeal are directed to only one aspect of the overall invention.

More particularly, the appealed invention is directed toward the female connectors of the construction system and primarily the hub such as shown at 21 in Figure 2. This hub is in the form of a substantially round disc-shaped plastic member. The disc-shaped hub 21 has two holes formed therein which are adapted to mate with two-fingered genderless rod connectors 12 (Figure 1) by means of an interference fit when the fingers at the ends of the rods are inserted into the holes. The holes in the disc can be either in the form shown at 22 or the form shown at 23. In both embodiments, each of the holes is substantially triangularly shaped and includes three internal angular corners. As shown to the right of Figure 2, one of the corners in each of the holes is closer to the other hole than the other corners, i.e., they are essentially in the alignment shown to the right of Figure 2.

In the embodiment of the invention referred to as type two connectors in Figure 2, the two holes are interconnected by a narrow passage thus, essentially making one larger hole. In

the embodiment referred to as type 3 connectors shown at the top right of Figure 2, the two holes are distinct from each other and a web of material separates the two holes. These embodiments are, of course, by way of example only.

6. ISSUES

The issues are whether Claims 6-12 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 5,350,331 to Glickman.

7. GROUPING OF CLAIMS

Although the claims have been grouped together by the examiner in his rejection, Appellants do not believe that all of the claims stand or fall together. More particularly, Appellants believe that the claims should be grouped as follows:

- I. Claims 6, 7 and 9.
- II. Claim 8.
- III. Claims 10 and 11.
- IV. Claim 12.

Appellants believe that each of the above groups is separately patentable from each of the other groups.

8. ARGUMENT

All of claims 6-12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Glickman '331 patent. According to the Examiner, in Figure 25, Glickman '331 discloses a connector comprising a round disk plastic member having at least two holes formed therein and adapted to mate with a connector 401 by means of an interference fit when the connector 401 is inserted into the holes. The Examiner also states that the holes are trapezoidal

with a web material separating the holes from each other. The Examiner acknowledges, however, that at least one and/or two of the holes are not triangularly shaped with three internal corners with one of the corners of at least one hole being closer to the other of the two holes than the other of the three corners as set forth in the claims. He takes the position, however, that the shape of the holes is dictated by the shape of the connector and that it would be obvious to one of ordinary skill in the art to modify the shape of the holes to conform to the shape of the desired connector such as a two-fingered genderless connector for the advantage of enhancing the connection between the connectors. This rejection is believed to be improper.

First, and contrary to the Examiner's statement, the connector 401 is not inserted into the holes. Rather, the connector 401 is inserted into only one hole. Appellants' claims specifically require that there be two holes that are adapted to mate with a two-fingered genderless connector by means of an interference fit when the fingers are inserted into the holes. Whether specifically stated in the specification or not, one of the advantages of this type of arrangement is that the two-fingered genderless connector cannot rotate when two fingers are inserted into two holes. This clearly differs from the arrangement shown in Figure 25 of Glickman '331.

Appellants also submit that it is improper for the Examiner to merely take the position that the shape of the holes would be obvious without some suggestion in the prior art. Since Glickman '331 does not show a two-fingered genderless connector, it is difficult to understand why or how it would be obvious to one skilled in the art to change the shape of the holes in order to accommodate a two-fingered genderless connector.

Glickman '331 also lacks many of the features of the dependent claims. For example, although the Examiner takes the position that it would be obvious to one skilled in the art to provide Glickman '331 with a narrow passage extending between two holes, there is no suggestion in Glickman '331 or elsewhere in the prior art to do this. The only suggestion comes from Appellants' disclosure and it is submitted that it is improper to use Appellants' own disclosure against them. Contrary to the Examiner's suggestion, the narrow passage as set forth in Claims 8 and 12 is not dictated by the shape of the connector. The same connector can be inserted into the openings whether they be connected or separated by a web of material.

Similarly, Glickman '331 lacks the features of claims 10-12 that require that each of the holes be substantially triangularly shaped wherein one of the angular corners of each of the holes be in alignment with each other. In Figure 25 of the Glickman '331 patent, there are a number of triangular openings but each one of them has an angular corner in alignment with the central opening and not with the corner of another triangular opening. Furthermore, there is no suggestion in Glickman '331 that the claimed arrangement should be constructed.

For all of the foregoing reasons, Appellants submit that claims 6-12 clearly and patentably distinguish over Glickman '331 and should be allowed.

Respectfully submitted,

ERIC CLEVER ET AL.

By:


Norman E. Lehrer

Registration No. 26,561

Dated: June 13, 2002

APPENDIX

6. Female connectors for use with a genderless construction system wherein said female connector is comprised of a substantially round disc shaped plastic member having two holes formed therein and adapted to mate with a two-fingered genderless connector by means of an interference fit when the fingers are inserted into the holes, at least one of said holes being substantially triangularly shaped and including three internal angular corners, one of said corners of said at least one hole being closer to the other of said two holes than the other two of said three corners.

7. The female connector as claimed in claim 6 wherein said holes are distinct from each other and a web of material is included separating said holes from each other.

8. The female connector as claimed in claim 6 wherein said holes are interconnected to each other by a narrow passage extending between said holes.

9. The female connector as claimed in claim 6 wherein each of said holes is substantially triangularly shaped and includes three internal angular corners therein.

10. The female connector as claimed in claim 9 wherein one of the angular corners of each of said holes are in alignment with each other.

11. The female connector as claimed in claim 10 wherein said holes are distinct from each other and a web of material is included separating said holes from each other.

12. The female connector as claimed in claim 10 wherein said holes are interconnected to each other by a narrow passage extending between said holes.

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Norman E. Lehrer, Reg. No. 26, 561

PETITION FOR EXTENSION OF TIME

Applicants, by their attorney, petition the Honorable Commissioner of Patents and
Trademarks for an extension of time of one month to and including June 13, 2002 within which
to file an Appeal Brief.

Our check in the amount of \$55 for the extension of time fee is enclosed. Please
charge any deficiency or credit any overpayment of this fee to the undersigned's deposit account
No. 12-1023.

Respectfully submitted,

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TRANSMITTAL LETTER

Enclosed for filing in the above-identified application are the following:

1. Appellants' Brief on Appeal in triplicate.
2. A Petition for Extension of Time along with our check in the amount of \$55.

It is Applicants' understanding that no fee is currently due for the filing of this Appeal
Brief in view of the fact that a prior Appeal Brief was filed and fee paid on March 12,
2001.

Respectfully submitted,

ERIC CLEVER ET AL.

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